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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(El Dorado)**

THE PEOPLE,

Plaintiff and Respondent,

v.

ROBERT RAMESES,

Defendant and Appellant.

C081095

(Super. Ct. No. P99CRF0145)

Defendant Robert Rameses appeals from the trial court's denial of his Proposition 47 petition for resentencing. (Pen. Code, § 1170.18.)¹ He contends there is insufficient evidence to support the ruling. We shall affirm.

¹ Undesignated statutory references are to the Penal Code.

PROCEDURAL BACKGROUND

In July 2000, defendant was convicted of one count of passing bad checks (§ 476a, subd. (a)) with four strikes based on four prior convictions for second degree murder in Florida. (*People v. Rameses* (Sept. 15, 2016, C078604) [nonpub. opn.] at p. 1 (hereafter Slip Opn.).) He was sentenced to 25 years to life. (*Ibid.*) We subsequently affirmed the judgment on appeal. (Slip opn. at p. 2.)

On November 3, 2014, defendant filed an in propria persona section 1170.126 petition for resentencing. The trial court ruled on the motion on January 15, 2015.

In denying the motion, the court's ruling stated:

"The court received a motion from the defendant requesting resentencing pursuant to the recent Proposition 47 and the previous Proposition 36 (the 'Three Strikes Reform Act'). The court has reviewed the moving papers as well as the files in these matters and respectfully denies both requests.

"The court takes judicial notice of its own files and notes that the defendant's prior convictions disqualify him from resentencing under Penal Code [section] 1170.126[, subdivision] (e). [(Italics omitted.)] In order to be eligible for the resentencing the prior convictions cannot be a serious or violent felony as set forth in Penal Code [section] 1192.7[, subdivision] (c). [(Italics omitted.)] The defendant's priors are set forth there.

"Further, the defendant does not qualify for resentencing pursuant to Proposition 47 for, essentially, the same reason. Those priors disqualify the defendant under Penal Code [section] 1170.18[, subdivision] (i). [(Italics omitted.)] Finally, to the extent necessary, the court makes a finding that the defendant remains a danger to society based on the priors.

"In sum, the petition for resentencing under both Propositions 36 and 47 is denied."

Defendant appealed the trial court's ruling. (Slip Opn., *supra*, at p. 1.) He contended on appeal that the court erred in ruling he was ineligible for resentencing under either proposition because the evidence did not establish that the Florida convictions would constitute second degree murder under California law, and that he was entitled to a hearing on the trial court's ruling that he presented a danger to society. (*Id.* at pp. 3-4.)

This court affirmed the trial court's ruling, finding "the record of defendant's prior convictions reveals he was aware of the probability his actions could cause death, rendering his second degree Florida murder convictions implied malice murder in California," and therefore ineligible for Proposition 36 resentencing. (Slip Opn., *supra*, at pp. 12-13.) We also concluded the trial court did not err in denying Proposition 47 relief because the trial court found that the bad checks totaled nearly \$2,300, rendering defendant ineligible for Proposition 47 relief. (*Id.* at p. 13.)

While the appeal was pending in the denial of his November 2014 petition for resentencing, defendant filed a Proposition 47 (§ 1170.18) petition on December 18, 2015. The trial court "reaffirm[ed]" its denial of resentencing under either statutory scheme on December 21, 2015.

On November 22, 2016, while this appeal was pending, the California Supreme Court denied defendant's petition for review of his appeal from the denial of his initial resentencing petition. (*People v. Rameses*, *supra*, C078604, review den. Nov. 22, 2016, S237908).)

DISCUSSION

Proposition 47 reduced various offenses from felonies to misdemeanors and provides a procedure for recalling the sentences of those currently serving a sentence for those offenses. (§ 1170.18; *People v. Rivera* (2015) 233 Cal.App.4th 1085, 1092.) Among the affected crimes is a violation of section 476a (uttering a bad check) when the

total amount does not exceed \$950. (§§ 476a, subd. (b), 1170.18, subd. (a).) Certain prior convictions render a defendant ineligible for relief. “The provisions of this section shall not apply to persons who have one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of section 290.” (§ 1170.18, subd. (i).) Section 667, subdivision (e)(2)(C) includes any homicide or attempted homicide as defined in sections 187 through 191.5 and any other felony punishable by life imprisonment or death. (§ 667, subd. (e)(2)(C)(iv)(IV) & (VIII).)

Defendant incorporates by reference his arguments in the prior appeal and asks us to reverse ourselves and hold that his Florida priors are not second degree murder under California law. We cannot do so.

“Collateral estoppel precludes relitigation of issues that were necessarily decided in prior litigation, but it operates only against those who were parties, or in privity with parties, to that prior litigation and who are thus bound by the resulting judgment. The party seeking the benefit of the doctrine, by contrast, need not have been a party to the earlier lawsuit.” (*Arias v. Superior Court* (2009) 46 Cal.4th 969, 985.) “There are five threshold requirements: 1) the issue to be precluded must be identical to that decided in the prior proceeding; 2) the issue must have been actually litigated at that time; 3) the issue must have been necessarily decided; 4) the decision in the prior proceeding must be final and on the merits; and 5) the party against whom preclusion is sought must be in privity with the party to the former proceeding.” (*People v. Garcia* (2006) 39 Cal.4th 1070, 1077.)²

² Since this case involves a separate action rather than a retrial following an appellate reversal, the law of the case doctrine does not apply. (See 9 Witkin, Cal. Procedure (5th ed. 2008) Appeal, § 459, p. 515 [“The doctrine of ‘law of the case’ deals with the effect of the first appellate decision on the subsequent retrial or appeal.”].)

Defendant does not address collateral estoppel, let alone raise any argument for why we should decline to apply it here. Defendant raises the same issue—whether his Florida priors are considered murders in California—that was litigated and decided against him in the litigation involving his prior petition for resentencing. He was a party to that decision and the decision is final. Defendant is precluded from relitigating our ruling that the Florida priors are second degree murder convictions in this state.

Since the Florida priors constitute second degree murder in California, they render defendant ineligible for resentencing. We therefore decline to address his contentions regarding his conviction for passing a bad check.

DISPOSITION

The judgment (order) is affirmed.

_____**BUTZ**_____, J.

We concur:

_____**ROBIE**_____, Acting P. J.

_____**MURRAY**_____, J.